IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5939 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIRECTOR - Petitioner(s)
Versus
PARMAR MAHESHBHAI DEVJIBHAI SON, AGE 33 YRS. - Respondent(s)

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Appearance :
MRS MANISHA LAVKUMAR, ASSTT. GOVERNMENT PLEADER for Petitioner(s) : 1,
MR TR MISHRA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/06/2007

ORAL JUDGMENT

1. Mrs. Manisha Lavkumar, learned AGP for the petitioner; Shri T.R.Mishra, learned counsel for

the respondents.

2. The petitioner being aggrieved by the order dated 24.11.95 passed in Recovery Application No. 3812 of 1986 by the 1st Labour Court, Ahmedabad, is before this Court with a submission that without any adjudication of pre-existing right of a labour, labour/workman could not make an application under Section 33-C[2] of the Industrial Disputes Act, 1947.

3. The short facts necessary for disposal of the writ application are that one Devjibhai Dahyabhai [since deceased] filed an application under Section 33-C[2] of the Industrial Disputes Act, notices were issue to Director, ESI Scheme and thereafter, inquiry was made and the Court passed the final order directing the present petitioner [original non-applicant] to pay sum of Rs.46,168.38 ps.

4. Placing reliance upon the judgment of the Supreme Court in the matter of *State of U.P. and another v. Brijpal Singh, reported in [2005] 8 SCC 58*, the learned AGP submits that the application filed by the original claimant was

not maintainable under Section 33-C[2], because, proceedings under Section 33-C[2] are in nature of an execution. It is also submitted that if the original claimant could show that there did not exist any dispute before making an application under Section 33-C[2], only then, in case of undisputable facts, the Labour Court can exercise its jurisdiction under Section 33-C[2].

5. Shri T.R. Mishra, learned counsel for the respondents, on the other hand, submits that number of the cases which were filed under Section 33-C[2] were allowed by the Labour Court, the matters came up before this Court and such writ applications were dismissed. On the other hand, learned AGP submits that in number of the other cases, such writ applications have been allowed and the orders passed by the Labour Court have been set aside and quashed. Shri Mishra submits that a Division Bench of this Court had taken a view that an application under Section 33-C[2] would be maintainable. The Division Bench judgment is

between Natvarlal Amratlal Shah and Employees' State Insurance Scheme, the matter was decided on 22nd March, 2001 and is reported in 2001 [4] L.L.N. 1203. Shri Mishra submits that the matter was taken up to the Supreme Court and Leave was not granted.

6. The judgment delivered on 22nd March, 2001 could obviously not consider the judgment delivered in 2005. Division Bench judgment of this Court though prior in time would not supersede the later judgment of the Supreme Court. Even if some judgment of the Supreme Court is ignored or the judgment of this Court is *per incurium* the earlier judgment of the Supreme Court, then, the law declared and propounded by the Supreme Court would bind the parties.

7. In the matter of State of U.P. [supra], the Supreme Court has observed that proceedings under Section 33-C[2] of the Act are in nature of an execution. The Supreme Court has observed that whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money

and which he is entitled to receive from his employer and is denied such benefit, he can approach the Labour Court under Section 33-C[2] of the Act. The benefits sought to be enforced under Section 33-C[2] of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. According to the Supreme Court, the difference between a pre-existing right or benefit on one hand and the right or benefit which is considered just and fair on the other hand is vital. The former falls within the jurisdiction of the Labour Court exercising powers under Section 33-C[2] of the Act, while the latter does not. In the present case, the respondent-workman before approaching the Labour Court did not issue any notice to the present petitioner nor the present petitioner at any point of time before the workman approached the Labour Court, ever admitted their liability. If there is no dispute between the parties, then, such workman can always approach the Labour Court under Section 33-C[2] and request it that there is undisputed pre-existing right and as

the payment only is denied, the Court should issue order under Section 33-C[2] of the Act.

8. In the present matter, the claimant approached the Labour Court, notices were issued and thereafter inquiry was made by the Labour Court, the Labour Court ultimately held that there appears to be no dispute between the parties. Such jurisdiction is not available to the Labour Court. A Labour Court is not required to entertain an application under Section 33-C[2] if it is not prima facie satisfied that there exists no dispute between the parties. Eve if such submission is made in the application filed under Section 33-C[2] and the other party/employer comes and raises a dispute even for the sake of a dispute, the Labour Court will have to stay its hands and have to ask the claimant to make an application under Section 10 of the Industrial Disputes Act. A Labour Court, after an inquiry, cannot hold that as there does not exist any dispute, the Labour Court would be entitled to exercise its powers under Section 33-C[2] of the Act.

9. True it is that there are judgments of this Court supporting the submission made by the learned counsel for the respondents. But in view of the said judgment of the Supreme Court, I must hold that an application under Section 33-C[2] was not maintainable and the Labour Court could not assume jurisdiction to make an order under Section 33-C[2] of the Act in favour of the respondents.

10. The petition is allowed. The award passed by the Labour Court is hereby quashed. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

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